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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,681

12/31/2003

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KCX-1226 (19589)

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12/02/2008

EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,681	<b>Applicant(s)</b> DAY ET AL.	
	<b>Examiner</b> Jeffrey C. Mullis	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33,37-40 and 42-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33,37-40 and 42-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Claims 33, 37-40, 42, 43, 44-46 and 50-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as filed does not disclose the end point of "about" 2.5:1 as recited in the last line of claim 33.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 37-40 and 43-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan, (US 6,531,544) in view of Morman (US 4,965,122) or Gillies (US 6,648,869) or Datta (US 5,665,186) or Morman (US 4,965,122; the secondary reference relied upon for claims 47-49). Patentees disclose a composition for

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nonwoven bonding of disposable diapers (abstract) containing SBS and SIS triblock copolymers (column 3, lines 1-17) in which a first block copolymer has a MFR of less than 20 and a second one greater than 30 having applicants MFR in combination (column 3, line 47-column 4, line 30). Olefin oligomers may be added as plasticizers at column 5, line 34.

Vaughan does not disclose nonwovens which are spun bonded or necked or corrugated and no examples exist of the specific combination of applicants claim 33 or specifically claim 42 and the amount of olefin oligomers is not disclosed

Gillies disclose a diaper containing layers bound to each other in which one layer is corrugated to more effectively provide a barrier to waste liquid (abstract; claims 15 and 16).

Datta discloses an absorbent article with a corrugated layer in order to better conform to the shape of the wearer (abstract).

It would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to provide a corrugated layer in the article of Vaughan in order to provide a better fit to the wearer or more effective absorption of liquids as taught by Datta and Gillies absent any showing of surprising or unexpected results.

With re to claim 42 it would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Vaughan absent any showing of surprising or unexpected results.

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Morman at column 1, lines 35-38 discloses use of necking to improve stretch and recovery characteristic. Hence it would have been obvious to a practitioner having an ordinary skill in the art to neck the material of the primary reference in order to improve stretch and recovery as taught by Morman absent any showing of surprising or unexpected results.

To use applicants amounts of polyolefin in the primary reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in that it requires only routine experimentation to find the optimum or workable range of a result effective variable absent any showing of surprising or unexpected results.

Claims 33, 37-40, 42, 43, 44-46 and 50-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maris (US 2003/0125442) optionally in view of Williams (US 5681894).

Patentees disclose a composition having a block copolymer "a1" explicitly having a MFR of less than 20 (and thus completely encompasses applicants "a") and a second styrenic block copolymer "a2" in a ratio of 95:5 to 5:95 (paragraphs 18 and 19). Note paragraph 23 where it is disclosed that the "a" block copolymers may have a molecular weight as low as 25,000 and since melt flow rate varies inversely with molecular weight and since 25,000 is a fairly low molecular weight applicants MFR of greater than about 20 would reasonably appear to be inherent.

Maris discloses no actual examples of applicants block copolymers in combination.

It would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Maris absent any showing of surprising or unexpected results.

Williams at the paragraph bridging columns 3 and 4 an SBS with a molecular weight of 58,000 and a melt flow rate of 23 (i.e. having a MFR of well above the minimum required by Maris and having applicants "b" MFR) which is commercially available. It would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to use the block copolymer of Williams as Maris' a-2 component motivated by the need for a block copolymer with a molecular weight of greater than 25,000 to practice Maris' invention and by the disclosure of the secondary references meeting this need (and further motivated by the convenience of use of a commercially available product) absent any showing of surprising or unexpected results.

It is noted that the disclosure of Williams that an SBS block copolymer with a molecular weight of 53,000 has a MFR of 23 also provides further evidence that the 25,000 molecular weight block copolymers of Maris have applicants "b" melt flow rates.

Applicant's arguments filed 8-28-08 have been fully considered but they are not persuasive. With regard to the rejection under 35 USC 112, first paragraph, the pertinent issue new matter , not clarity.

Vaughan only discloses that "at least one block copolymer having a low melt flow rate is surmised to be critical to the invention" (column 3, lines 32-34) and does not require both to have low melt flow rates nor does the reference disclose that melt flow

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rates of 20-30 are high. In fact patentees disclose the use of block copolymers having greater than 20 MFR in all examples and can therefore hardly be said to teach against block copolymers with melt flow rates higher than 20 and especially when between 20-30. It is not clear why Vaughan would teach use of MFR greater than 30 for the second copolymer for styrenic contents higher than 40% if Vaughan meant that styrenic copolymers with more than 40% styrene should not be used at all. Even for the sake of argument that Vaughan is disclosing a less preferred embodiment for use of block copolymers with MFR's greater than 20 there is a requirement in law that when selecting from various disclosures of the reference that only the very most preferred embodiments be used (although admittedly selecting from less and less preferred embodiments would make any prima facie case of obviousness less and less compelling. With regard to applicants ratio of block copolymers, Vaughan discloses a ratio of high MFR block copolymer to low MFR block copolymer of 1:1.5 in Example 2. Applicants allege unexpected results based on the effect of applicants block copolymer ratios. However further explanation is required particularly with regard to the composition of materials which were used in the examples and comparative examples. At present no data clearly comparative to the closest prior art has been presented as required by MPEP 716. It is noted that all that is needed to arrive at applicants invention is to substitute the 40 MFR SIS of Example 2 of Vaughan with SBS of 40 MFR as suggested by column 4, lines 20-21 of Vaughan or make a similar substitution in Example 1.

It is true that paragraph 23 of Maris refers to a mixture of a1 and a2 and there is nothing contradictory to this interpretation in the Office action. The fact that paragraph 23 refers to a mixture means that the melt flow rate of the lowest molecular weight component (i.e. a2) would have to be higher than 23 for the mixture to have a MFR of 23 given that a-1 must have an MFR of 20 or less. It is not nor has it ever been the examiner's position that MFR is directly proportional to molecular weight only that it increases with molecular weight and that addition of a high melt flow block copolymer will not result in a lowering of the MFR of the low melt flow block copolymer. The issue with regard to obviousness relying on Maris alone is whether a SBS or SIS block copolymer as disclosed by Maris with a molecular weight of 25,000 could possibly have a MFR of 20 or less as seems unlikely based on MFR and molecular weight data reported by the prior art in which case the block copolymer a-2 would have to have MFR of higher than 20. The examiner's position is based on selection from a single disclosure of the reference not selection from various discloses in the reference or assumptions about material features in the reference which are not disclosed as in the discussion cited in MPEP 2163.07(a) It is noted that Williams discloses block copolymers with MFR's of 23 and the discussion of which molecular weights inherently result in which melt flow rates is irrelevant when relying on Williams.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis  
M-F, 9-5 pm at telephone number 571 272 1075.

JCM

11-24-08

Jeffrey C. Mullis  
Primary Examiner  
Art Unit 1796

/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796